

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAXIMA ALIAGA,

Plaintiff,

- against -

NEWSWEEK MEDIA GROUP, INC.

Defendant.

Docket No. 18-cv-12016

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Maxima Aliaga (“Aliaga” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Newsweek Media Group, Inc.

(“Newsweek” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photographs of tapanuli orangutans in the wild, owned and registered by Aliaga, a France-based professional photographer. Accordingly, Aliaga seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Aliaga is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 4 Rue Beethoven, Jacou 34830 (France).

6. Upon information and belief, Newsweek is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 7 Hanover Square, 5th Floor, New York, NY 10004.

7. At all times material hereto, Newsweek has owned and operated an on-line magazine at the URL <http://www.newsweek.com> (the “Website”).

8. Newsweek is a for-profit entity.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. Aliaga photographed tapanuli orangutans in their natural environment (the “Photographs”). True and correct copies of the Photographs are attached hereto as Exhibit A.

10. Aliaga is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

11. The Photographs were registered with the United States Copyright Office and were given registration number VA 2-127-595, with effective date of November 21, 2018 (the “595 Registration”). Attached as Exhibit B is a true and correct copy of the 595 Registration.

B. Defendant’s Infringing Activities

12. On or about November 2, 2017, Newsweek ran an article on the Website entitled *Tapanuli Orangutan: Scientists Just Discovered A Completely New Species of Great Ape*. See

URL <https://www.newsweek.com/tapanuli-orangutan-scientists-discovered-new-species-great-ape-699056> (the “Article”).

13. The Article prominently featured the Photographs. A true and correct copy of the Article is attached hereto as Exhibit C.

14. Newsweek did not license the Photograph from Plaintiff for its Article.

15. Newsweek did not have Plaintiff’s permission or consent to publish the Photograph on its Website.

16. Prior to the filing of this lawsuit, there was no communication between Plaintiff and Defendant.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Newsweek infringed Plaintiff’s copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Newsweek is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

19. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

20. Upon information and belief, the foregoing acts of infringement by Defendant have been willful and in reckless disregard of Plaintiff’s rights.

21. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Newsweek be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December __, 2018

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